

**HIGH COURT FORM NO. (J)2**

***HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE***

DISTRICT: Dibrugarh

**IN THE COURT OF THE MUNSIFF NO.2 AT  
DIBRUGARH**

**PRESENT: Smti. Rituparna Sarmah, AJS**

**Tuesday, on the 14th day of December, 2021.**

**Money Suit No. 18 OF 18**

IDBI BANK LIMITED

.....PLAINTIFF

-Versus-

Sri Kamal Gogoi

S/O Lt Lachit Gogoi

Resident of Tehngal Gaon, Barbaruah

P.O Medela

Dist: Dibrugarh, Assam

..... DEFENDANT

- .....
1. Advocate for the plaintiff : Mr. Jainuddin Ahmed
  2. Advocate for the defendant: Sri Surya Singhania  
Sri Bhaskarjyoti Dutta

.....  
This suit coming on for final hearing on 29th day of

November, 2021 and having stood for consideration to this 14<sup>th</sup> day of December 2021, the court delivered the following Judgment:-

**JUDGMENT**

1. This is a suit for recovery of an amount of Rs.65,632/- (Rupees Sixty Five Thousand Six Hundred and Thirty Two) from the defendant.
  
2. **PLAINTIFF'S CASE:** The plaintiff's case is in brief is that the plaintiff is a company registered under the Companies Act, 1956 and a banking company under the Banking Regulation act, 1949 having its registered office at Mumbai and branch office at HS Road, Dibrugarh. Plaintiff's bank is duly represented by Mr. Dhruva Jyoti Sarma, the Branch Manager and Principal Officer of the Plaintiff's Dibrugarh Branch.
  
3. That the defendant being in need of financial assistance applied for a loan of Rs.50,000/-(Rupees Fifty Thousand) by a loan application dated 21.05.13 under KCC scheme at the plaintiff branch at Dibrugarh. That, considering the said loan application the plaintiff's bank sanctioned a term Loan of Rs.50,000/-(Rupees fifty Thousand) by a Sanction letter dated 01.06.13 subject to acceptance of the terms and condition of the said sanction letter. That the defendant in order to avail the said loan facility and in token of acceptance of the terms and conditions of the

sanctioned letter executed Demand Promissory Note ,  
"Deed of Hypothecation" on 01.06.13 agreeing to repay  
the loan amount as per the terms of agreement thereof.

4. Though the defendant accordingly avail the said loan amount but thereafter failed to make the payment as per the terms and conditions of the loan agreement in spite of execution of Balance Confirmation on 31.12.15 and in spite of receipt of demand letter dated 06.05.17. That in spite repeated request and demand by the plaintiff and even in spite of received the demand letter failed to pay the loan amount with interest. That after adjustment of all amount drawn by the defendant and after accrual of interest from time to time, all charges thereon inclusive of interest up to 01.03.17 a total sum of Rs. 65,632/- (Rupees Sixty Five Thousand Six Thirty Two) in the said loan account has become an outstanding and the payment of which the defendant is liable to pay to the plaintiff. Hence, the plaintiff has filed the instant suit.
5. On receipt of the plaint, the same was registered as M.S 18 OF 18 and summon was issued to the defendant. On receiving the summon the defendant appeared and filed the written statement.

**THE BRIEF FACTS OF THE WRITTEN STATEMENT**

6. In the written statement the defendant denied all the averments made by the plaintiff and stated that no any

balance confirmation was signed by the defendant. It is also contended that the suit of the plaintiff is barred by law of limitation.

### **ISSUES**

7. On the basis of rival pleading of the parties my Ld. predecessor in office has framed the following issues for the proper adjudication of the suit.
  - I. Whether the suit is maintainable in law and facts?
  - II. Whether the plaintiff bank has sanctioned a term loan of Rs. 50,000/-(Rupees Fifty Thousand) to the defendant by executing a deed of hypothecation and the defendant in spite of balance confirmation and receipt of demand letter had failed and neglected to pay the loan amount with interest?
  - III. Whether the plaintiff is entitled to the reliefs as prayed for?
  - IV. To what other relief/reliefs the parties are entitled to?
8. During trial, the plaintiff examined one witness but the defendant remained unrepresented after the filing of evidence of PWs and as such did not avail the opportunity to cross examine the P.W. As such vide order dated 04.03.20 the cross-examination of P.W-1 was deemed to be declined. 7 (seven) numbers of documents have been produced by the plaintiff in order to substantiate its case.

Per contra, being unrepresented after filing of PWs, the defendant side had also failed to file any DWs.

**DISCUSSION, DECISIONS & REASON THEREOF**

9. I have heard Mr. Jainuddin Ahmed, Id. counsel appearing for the plaintiff and have gone through the case record. As already mentioned above, the defendant side had remained unrepresented after the filing of PWs as such they also did not avail the opportunity to conduct the argument. Upon considering the pleading of the plaintiff, submissions made by the learned counsel for the plaintiff and also after delving into evidences adduced by the plaintiff; my findings and reasons are as follows:

10. **Issue no. I** Whether the suit is maintainable in law and facts?

The instant suit relates to the determination of a civil right and enforcement thereof. There is no express or implied bar to the cognizance of the instant suit. Thus in view of section 9 of the Code of Civil Procedure I find and hold that the instant suit is very well maintainable in law and facts. Further, there is a cause of action for this instant suit and the suit is not barred by limitation. Accordingly, this point is decided in favour of the plaintiff.

11. **Issue No.(II)**: Now, P.W-1 Sri Dhruba Jyoti Sarma is the Branch Manager of IDBI Bank Ltd. Dibrugarh. In his evidence-in-chief in affidavit, he has reiterated the

averments made in the plaint. He has also exhibited 7 numbers of documents in support of his averments. From Exhibit-1 i.e the loan application dated 21.05.13, it appears that the defendant had applied for a loan of Rs. 50,000/- (Rupees Fifty Thousand) from the Plaintiff bank and Exhibit-1(1) is the signature of the defendant. Exhibit-2 is the sanction letter dated 01.06.13. Exhibit-2(1) is the signature of the Manager and Exhibit-2(2) to 2(7) are signature of the defendant. From Exhibit-2, it appears that after due consideration the plaintiff bank had sanctioned the said amount in favour of the defendant. That the defendant in order to avail the loan facility and in token of acceptance of the terms and condition of the sanctioned letter executed Demand Promissory Note dated 01.06.13 i.e. Exhibit-3 and Deed of Hypothecation dated 01.06.13 i.e. Exhibit -4.

P.W-1 further deposed that the defendant had failed to keep up the commitment undertaken with the plaintiff in regard to the repayment of the loan. That in spite of repeated request and demand made by the plaintiff and even after receipt of demand notice dated 06.05.17 i.e. Exhibit-6 and even after execution of balance confirmation dated 31.12.15 failed to pay the loan amount. Exhibit-5 is the said balance confirmation and Exhibit-5(1) is the signature of the defendant. As such after adjustments of all amount drawn by the defendant and after accrual of interest from time to time, inclusive of interest up to

01.03.17 a total sum of Rs.65,632/-(Rupees Sixty Five Thousand Six Hundred and Thirty Two)has become due and outstanding in the loan account of the defendant as per the statement of accounts. Exhibit-7 is the statement of account and Exhibit-7(1) is the signature of the Manager.

Thus, from all documentary evidence as well as from the oral evidence of the witness it is clear that the defendant took loan amount of Rs. 50,000/-(Rupees Fifty Thousand) only from the plaintiff bank but failed and neglected to repay an amount of Rs.65,632/-(Rupees Sixty Five Thousand Six Hundred and Thirty Two) inclusive of interest up to 01.03.17 in spite of demand from the plaintiff and having balance confirmation 31.12.15.

As stated above, the defendant failed to cross-examine the P.W-1. Thus the evidence adduced by P.W-1 and the documents exhibited by him has remained unchallenged. It also appears that the documents have been produced from proper custody and proved in due manner. Hence I do not find anything to disbelieve the evidence and the documents produced and exhibited by the plaintiff.

Hence, the issue no. (II) is decided in favour of the plaintiff.

12.Now for the sake of brevity, issue no (III) & (IV) are taken up together.

13. **Issue no(III) & (IV):**

In light of the discussions made herein above the plaintiff is entitled to recover a sum of Rs.65,632/-(Rupees Sixty Five Thousand Six Hundred and Thirty Two) inclusive of interest up to 01.03.17 at the contractual rate of interest. In addition to that the plaintiff is entitled to the cost of the suit.

**ORDER**

14. The suit of the plaintiff is decreed on contest with cost. The plaintiff Bank is entitled to recover, from the defendant, an amount of Rs.65,632/-(Rupees Sixty Five Thousand Six Hundred and Thirty Two) with the interest *pendente lite* from 02.03.17 till recovery of the loan amount at the contractual rate of interest.

15. Cost of the suit to be calculated in accordance with law.

16. Prepare a decree accordingly.

The judgment is delivered and pronounced by me in the open Court today given under my hand and seal of this court on this 14<sup>th</sup> day of December, 2021.

Typed by me.

**(SMTI. RITUPARNA SARMAH)**

**Munsiff No. 2, Dibrugarh**

**APPENDIX**

**I . Plaintiff's Witness:**

P.W-1: Sri Dhruba Jyoti Sarma

**II. Plaintiff's Exhibits :**

- Ext.1 : Loan application
- Ext. 1(1) : Signature of the Defendant.
- Ext.2 : Letter of Intent/Sanction Letter
- Ext.2(1) : Signature of the Manager.
- Ext.2(2) to 2(7) : Signature of the defendant.
- Ext.3 : Demand Promissory Note
- Ext.3(1) : Signatures of the defendant.
- Ext.4 : Deed of Hypothecation
- Ext.4(1)- 4(20) : Signature of the defendant.
- Ext.5 : Balance Confirmation
- Ext.5(1) : Signature of the Defendant.
- Ext-6 : Demand Notice
- Ext-6(1) : Signature of the Manager.
- Ext-7 : Statement of Account.
- Ext-7(1) : Signature of the Manager

**III. Defendant's Witnesses :**

Nil

**IV. Defendant's Exhibits :**

Nil

**(SMTI. RITUPARNA SARMAH)**

**Munsiff No. 2, Dibrugarh**